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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
January 8, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-16803

In the Matter of	
MAHER F. KARA,	**Administrative Law Judge Carol Fox Foelak**
Respondent.	

DIVISION OF ENFORCEMENT'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION AND OPPOSITION TO RESPONDENT MAHER F. KARA'S CROSS-MOTION FOR SUMMARY DISPOSITION

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2	Chart depicting members of insider trading ring (Exhibit No. 417 from the trial of Bayyouk)
3	Final Judgment and Sentencing Order against Maher F. Kara, entered Dec. 23, 2014 (Criminal Action, ECF No. 251)
4	Order dated Mar. 22, 2011 (Civil Action, ECF No. 86)
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Joint Exhibit No.[2]	Description
1	Indictment filed April 21, 2009 in *United States v. Maher Fayez Kara et al.*, No. -09-CR-0417 (N.D. Cal.)
2	Trial testimony of Maher F. Kara in *United States v. Bayyouk*, No. 12-CR-420 (EMC) (N.D. Cal.) on August 27, 2013
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6	July 6, 2011 plea agreement entered into by Maher F. Kara with the United States Attorney's Office in *United States v. Maher F. Kara*, 09-CR-0417 (EMC) (N.D.

[1] The Division Exhibits were filed contemporaneously with the Division's Motion for Summary Disposition on November 13, 2015, and are attached to the Declaration of E. Barrett Atwood.

[2] The Joint Exhibits were filed with the parties' Joint Stipulation of Facts on October 19, 2015.

Joint Exhibit No.[2]	**Description**
	Cal.)
7	July 7, 2011 Transcript of Maher Kara's Plea Hearing in *United States v. Maher F. Kara*, No. 09-CR-0417 (EMC) (N.D. Cal.)
8	August 19, 2015 executed Consent of Maher F. Kara to Entry of Judgment in *SEC v. Kara, et al.*, No. 09-cv-1880 EMC (N.D. Cal.)
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Harris Declaration Exhibit No.[3]	**Description**
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[3] The Declaration of George C. Harris, dated Dec. 21, 2015, and filed concurrently with Respondent's Opposition and Cross-Motion ("Harris Decl.") attaches these exhibits.

The parties previously requested jointly to resolve this matter by cross-motions for summary disposition and the Court granted that request by Order dated October 5, 2015. Accordingly, on November 13, 2015, the Division of Enforcement ("Division") filed its Motion for Summary Disposition against Respondent Maher F. Kara ("Respondent" or "Kara") and Supporting Memorandum in Law ("Motion") pursuant to Rule 250 of the Securities and Exchange Commission's ("Commission") Rules of Practice. Pursuant to the Court's October 5, 2015, Order, Respondent filed his Opposition to Division's Motion for Summary Disposition, Cross-Motion for Summary Disposition, and Supporting Memorandum of Law ("Cross-Motion" or "Opposition") on December 21, 2015, agreeing that this matter should be resolved by summary disposition. Opp'n at 1. Pursuant to the Court's October 5, 2015, Order, the Division hereby files its reply in support of its Motion and in opposition to Respondent's Cross-Motion. For the reasons set forth below and in the Motion, Respondent's Cross-Motion should be denied and the Division's Motion should be granted in its entirety.

I. INTRODUCTION

Respondent Kara willfully committed securities fraud by serving as the tipper for a multimillion dollar insider trading ring that operated for a period of years. Kara and his illegal trading ring were discovered in 2007. Four years later in 2011, Kara pled guilty to criminal charges of conspiracy and securities fraud, was subsequently convicted in 2014, and in 2015, he entered into a settlement with the Commission in which he consented to the entry of an order permanently enjoining him from violating the federal securities laws. These facts are not in dispute, but their import is seriously questioned by Respondent. The questions presented to the Court are whether Kara should be permitted to return to the securities industry and if so, to what extent. The resounding answer is no because it is in the public interest to bar Kara from the industry.

Kara's conduct was egregious and performed with a high degree of scienter over a period of years. He took numerous steps to avoid detection by the authorities and when discovered, he blatantly lied to Commission staff. When charged by the United States and sued by the Commission, he did not come clean. He asserted his Fifth Amendment right to remain silent and litigated for over a year. Eventually, Kara came to realize the folly of his path and elected to cooperate with the criminal authorities. Now, years after the conclusion of the underlying investigation and resolution of the related criminal actions, which very much took into account his cooperation, Respondent argues that he should be permitted to remain in the securities industry, particularly so that he may be an investment adviser.

Respondent's first argument presented in his Opposition and Cross-Motion is that the Division acts too late to bar him from the securities industry. He relies on the fact that his misconduct occurred more than five years ago and is thus not actionable pursuant to 28 U.S.C. § 2462's ("Section 2462") five-year statute of limitations. This limitations period is not applicable because Congress provided a 10-year limitations period for the Commission to issue a bar predicated on a criminal conviction for securities fraud. Moreover, even if Section 2462 applied, two independent bases for bringing the present action occurred well within its limitations period: Kara's criminal conviction in 2014 and the entry of injunction against him in 2015.

Respondent next argues that if an associational bar is warranted, it must not extend to collateral associations—specifically, a bar on association with an investment adviser—because this would be an impermissibly retroactive application of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), Pub. L. No. 111-203, 124 Stat. 1376 (2010). His argument is without merit. Prior to the passage of the Dodd-Frank Act, the Commission possessed the authority to issue the collateral bars sought here. The Dodd-Frank Act merely altered the procedure by which such bars may be issued and did not impact Respondent's substantive rights.

Respondent's last arguments center on the factors enunciated in *Steadman v. SEC*, 603 F.2d 1126 (5th Cir. 1979), and whether a permanent bar is warranted.[4] In making these arguments, Respondent submits that a broker-dealer bar with a right to reapply in three years is the appropriate remedial action to protect the public interest. Kara touts his belated recognition of his wrongful conduct and subsequent cooperation with the criminal authorities. Yet, at the same time he argues that the nature of his conduct was not egregious or committed with a high degree of scienter and it only spans a short duration. His arguments contradict; but the facts do not: (1) Kara willfully provided his brother with the nonpublic information of Kara's investment banking clients from 2002 to 2007 in knowing violation of his employer's confidentiality policy and his own fiduciary duties; (2) regardless of when Kara became aware of his brother trading on this information, the improper disclosures persisted and on at least two occasions, Kara intended for his brother to trade on that information, which led to millions of dollars of illicit profits; and (3) throughout the scheme, Kara engaged in deceptive practices to avoid detection and when confronted by the staff, he lied. Regardless of his belated recognition of his wrongful conduct and subsequent cooperation, Kara's actions warrant barring him from the securities industry permanently in order to protect the investing public. For these reasons and those discussed below and in the Motion, the Division respectfully requests the Court impose a collateral bar

[4] Respondent also makes a passing argument in a footnote that the Division's claims should be denied because the Commission's administrative law judges were appointed unconstitutionally. As discussed below, this argument is without merit.

against Kara, permanently barring him from associating with any investment adviser, broker, dealer, municipal securities dealer, or transfer agent.

II. ARGUMENT

A. The Division's Initiation of Proceedings is Timely.

The purpose of this proceeding is to determine "[w]hat, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act," if the Division proves that it is true either that Respondent was convicted of securities fraud in December 2014 or that he was enjoined by a federal district court against future violations of Exchange Act Sections 10(b) and 14(e) of the and Rules 10b-5 and 14e-3 in August 2015. Order Instituting Proceedings ("OIP") at 2; *see also* Mot. at 2 ("The bases for barring Kara are not disputed. He has been enjoined from violating the antifraud provisions of the securities laws and he has been criminally convicted of conspiracy and securities fraud."). Respondent does not dispute the dates of his December 23, 2014, conviction or the August 21, 2015, order enjoining him, both which fall well within any applicable limitations period. *See* 15 U.S.C. § 78o(b)(6)(A)(ii), (iii) (providing for administrative proceedings against a person associated with a broker or dealer, based on a conviction in the last 10 years or on an injunction for conduct in connection with the purchase or sale of a security). This proceeding is therefore timely.

Respondent, however, argues that the question of what remedial action is appropriate may be avoided entirely by applying Section 2462 (Opp'n at 20-23), which provides:

> Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.

By its own terms, this catch-all statute does not apply where another "Act of Congress" supplies the period by which an action, suit, or proceeding should be commenced. And Congress has set forth a different limitations period in the second subsection of Section 15(b)(6)(A) of the Exchange Act. Therefore, as the controlling Commission authority describes, the independent basis for the present "follow-on" proceeding—Kara's criminal conviction—is not subject to Section 2462's five-year limitations period, and the time for commencing such actions does not run from the time of the underlying misconduct in any event. *Joseph Contorinis*, Inv. Advisers Act Rel. No. 3824, 2014 WL 1665995, at *3 (Apr. 25, 2014). The Commission explains that:

> [A]ny applicable statute of limitations for a follow-on proceeding such as this one runs from either the date of the criminal conviction or the injunction upon which the action is based, not from the date of the underlying conduct. . . . [T]he five-year statute of limitations of § 2462 does not apply in this case because a follow-on proceeding seeking an industry-wide bar is not "for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise" within the meaning of § 2462. And even if § 2462 were deemed to apply to a follow-on proceeding based on an injunction, the proceeding here, as noted, was brought less than two years after the injunction against [the respondent] was entered.

Joseph Contorinis, 2014 WL 1665995, at *3 (citations omitted). *See also Spring Hill Capital Markets, LLC*, Rel. No. 919, 2015 WL 7730856, at *4 (Nov. 30, 2015) (acts occurring outside the limitations period may be considered in determining the appropriate remedial sanction) (citing *Terry T. Steen*, Exchange Act Rel. No. 40055, 1998 SEC LEXIS 1033, at *14-17 (June 1, 1998)). Moreover, even the D.C. Circuit case relied upon most heavily by Respondent similarly makes clear that Section 2462 does not apply when the Exchange Act offers an alternative 10-year period. *See Johnson v. SEC*, 87 F.3d 484, 492 n.15 (D.C. Cir. 1996) (observing that the Exchange Act includes "longer limitations periods" and citing Section 15(b)(4)(B), which allows the Commission to "sanction broker who has been convicted by a foreign court of a securities violation within the past ten years").

Despite the clear and controlling Commission precedent, Respondent asserts that the Division's "cause of action for associational bars thus accrued more than five years before this proceeding was commenced" because an "associational bar *can be imposed*" based upon proof of a willful violation of the Exchange Act under Section 15(b)(6)(A)(i). Opp'n at 23 (emphasis added). But whether the Division *could have* sought such a bar based upon proof of willful violations pursuant to subsection (i) of Section 15(b)(6)(A) is irrelevant; the OIP does not describe this separate basis for a bar, but instead alleges the facts relevant to the two distinct prongs of Section 15(b)(6)(A) found in subsections (ii) and (iii). OIP at 1-2. Respondent's argument about an action that might have been instituted but was not is inapposite and an improper attempt to end-run the applicable limitations period. *See Joseph Contorinis*, 2014 WL 1665995, at *3 (rejecting argument akin to Respondent's and holding that dismissal of a proceeding because one statutory basis might be untimely "would contravene Congressional intent to allow the Commission to initiate proceedings on any of the three alternative bases") (citing *Michael J. Markowski*, Exchange Act Rel. No. 44086, 2001 WL 267660, at *2 (Mar. 20, 2001), *pet. denied*, No. 01-1181, 2002 WL 1932001 (D.C. Cir. Apr. 25, 2002); *Proffitt v. FDIC*, 200 F.3d 855, 862-65 (D.C. Cir. 2000)). To find otherwise would effectively eviscerate the relevant limitations period set forth in Section 15(b)(6)(A)(ii) of the Exchange Act. It would also necessitate that administrative proceedings be brought concurrently with actions in district court, and thus impermissibly limit the Commission's discretion to initiate "follow-on" proceedings at the conclusion of parallel actions. Such a result is contrary to congressional mandate and wasteful of judicial resources. Accordingly, Respondent's statute of limitations argument should be rejected.[5]

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[5] Respondent's reliance on *In re Ruffalo*, 390 U.S. 544 (1968), and *3M Co. v. Browner*, 17 F.3d

(Continued on next page)

B. <u>The Commission is Authorized to Issue the Collateral Bars Sought Here.</u>

Respondent's argument against a collateral bar here confuses a procedural change with one altering substantive rights. The Dodd-Frank Act altered the procedure the Commission may use to initiate "follow-on" proceedings such as this action, but it did not change Respondent's substantive rights. Prior to the Dodd-Frank Act, the Commission initiated "follow-on" proceedings for each segment of the securities market; but now, such collateral bars may be issued in a single "follow-on" proceeding. *John W. Lawton*, Advisers Act Rel. No. 3513, 2012 WL 6208750, at *5 (Dec. 13, 2012), *called into question on other grounds by Koch v. SEC*, 793 F.3d 147 (D.C. Cir. 2015); *Koch*, 793 F.3d at n.3. These procedural changes do not raise retroactivity concerns. *Koch*, 793 F.3d at n.3; *see also Gregory Bartko*, Exchange Act Rel. No. 71666, 2014 WL 896758, at *13-14 (Mar. 7, 2014) (rejecting respondent's claim of impermissible retroactivity and imposing "follow-on" collateral investment adviser bar pursuant to Exchange Act Section 15(b)).

Indeed, as the D.C. Circuit held in *Koch*, unlike the municipal adviser and nationally recognized statistical rating organization ("NRSRO") bars that were newly enacted by the Dodd-Frank Act, the Commission already had the authority to impose each of the collateral bars sought here prior to the Act, which merely allowed for a more efficient procedure. *Id.*; *see also Lawton*, 2012 WL 6208750, at *7-10; *Erick Laszlo Mathe*, Rel. No. 874, 2015 WL 5013727, at *3, n.3

1453 (D.C. Cir. 1994) (*see* Opp'n at 21), is misplaced. *Compare In re Ruffalo*, 390 U.S. at 550 (as acknowledged by Respondent, addressing disbarment of an attorney in the context of procedural due process) *with Salim B. Lewis*, Rel. No. 51817, 2005 WL 1384087, *3 n.26 (June 10, 2015) (distinguishing *Ruffalo* and holding that "proceedings instituted pursuant to Exchange Act Section 15(b)(6)(A) are designed to protect the public from individuals who have shown themselves unfit to be associated with a broker or dealer"); *compare Browner*, 17 F.3d at 1455-60 (holding that Section 2462 applies to administrative proceedings that seek to impose *civil monetary penalties*) *with Timbervest, LLC*, Advisers Act Rel. No. 4197, 2015 WL 5472520, at *15, n.70 (Sept. 17, 2015) (holding that Section 2462 does not apply to equitable remedies such as collateral bars) (citations omitted).

(Aug. 25, 2015) (in "follow-on" proceeding brought pursuant to Section 15(b) of the Exchange Act and where underlying conduct occurred prior to the Dodd-Frank Act's effective date, imposing collateral bars while excepting associational bars for municipal advisors and NRSROs in light of *Koch*).[6] Indeed, both before and after the Dodd-Frank Act, the Commission possessed the authority to impose an investment adviser bar under Section 15(b) of the Exchange Act. *Cf. Feeley & Willcox Asset Mgmt. Corp.*, Rel. No. 2143, 2003 WL 22680907, at *14 (July 10, 2003) (in proceeding where respondent found to violate the Advisers Act, holding that collateral broker-dealer bar was appropriate).[7]

C. <u>The SEC's Appointment of Law Judges is Not Subject to the Appointments Clause</u>.

In a footnote, Respondent argues that "the SEC's appointment of the administrative law judge ('ALJ') was unconstitutional" because "SEC ALJs are 'inferior officers'" who were not properly appointed pursuant to the Appointments Clause. Opp'n. at 4 n.1. That is incorrect. As the Commission found in *David F. Bandimere*, Exchange Act Rel. No. 76308, 2015 WL 6575665, at *19-21 (Oct. 29, 2015), *Timbervest, LLC*, *supra*, and *Raymond J. Lucia Cos.*, Exchange Act Rel. No. 75837, 2015 WL 5172953, at *21 (Sept. 3, 2015), Commission ALJs are employees, not constitutional officers, and they are thus not subject to the Appointments Clause's requirements.

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[6] As stated in its Motion, the Division is not seeking to bar Respondent from associating with municipal advisers or NRSROs. Mot. at 4 n.4.

[7] Respondent asserts that he "had no association with an investment adviser and was not charged under the Advisers Act." Opp'n at 26 (without citation). Notably, Respondent fails to claim that he is not seeking to become an investment adviser and his Opposition explicitly seeks to carve out an investment adviser exception for any imposed collateral bar (*see*, *e.g.*, Opp'n at IV(B)). To the extent Respondent is making such an argument, it is without factual support and beyond the scope of the parties' Joint Stipulation of Facts. If this issue is disputed by Respondent, then the Division invites a limited hearing to explore the topic.

D. A Permanent Collateral Bar Is Necessary to Protect the Public Interest.

1. A permanent, collateral bar is warranted because Respondent acted egregiously with a high degree of scienter on multiple occasions.

Despite the record of his actions that fully support a permanent securities bar, Respondent advocates for a time-limited bar that specifically allows him to pursue association with an investment adviser now. Opp'n at IV(B). In advocating for such a carve out to a collateral bar, Respondent argues that the Division mischaracterizes his blatantly illegal conduct which, over a period of years, willfully breached the fiduciary duties Kara owed to his employer and its clients. *Id.* at 28-31. However, the facts are not in dispute and the record makes clear that Kara acted egregiously with a high degree of scienter over a period of years. Mot. at 18-23. Kara's high degree of scienter is demonstrated by his attempts to cover his tracks in order to avoid detection and the outright lies he made to the Commission staff during the underlying investigation. *Id.* at 20; *see also Robert D. Tucker*, Exchange Act Rel. No. 68210, 2012 WL 5462896, at *11 n.56 (Nov. 9, 2012) (stating that "efforts to conceal violative conduct demonstrate scienter"); *Phillip J. Milligan*, Exchange Act Rel. No. 61790, 2010 WL 1143088, at *5 (Mar. 26, 2010) (attempts to conceal misconduct support a finding of scienter). Under such circumstances, a permanent bar is warranted. *See, e.g.*, *Thomas D. Melvin, CPA*, Exchange Act Rel. No. 75844, 2015 SEC LEXIS 3624, at *8 (Sept. 4, 2015) (in "follow-on" proceeding, issuing permanent bar after respondent was enjoined after settling district court action alleging insider trading on one pending acquisition).

Respondent, however, attempts to explain his illegal conduct in the context of succumbing to family and job pressures, and reluctant participation in the scheme. Opp'n at 9-16, 28-31. As an initial matter, such circumstances are not mitigating factors when considering the appropriate remedial action, much less the extraordinary mitigating circumstances that are required in order to remain in the securities industry after a criminal conviction for securities fraud. *See David G. Ghysels and Kenneth E. Mahaffy, Jr.*, Exchange Act Rel. No. 62937, 2010 SEC LEXIS 3079, at *16 (Sept. 20, 2010) (holding that "'[a]bsent extraordinary mitigating circumstances,' a person convicted of conspiracy to commit securities fraud' cannot be permitted to remain in the securities industry") (quoting *John S. Brownson*, Admin. Proc. File No. 3-10295, 2002 SEC LEXIS 3414, 55 S.E.C. 1023 (July 3, 2002), *pet. denied*, 66 Fed. App'x 687 (9th Cir. 2003)); *Sachin K. Uppal*, Rel. No. 920, 2015 WL 774818, at *7 (Dec. 1, 2015) (holding that imprisonment, loss of future income, and attendant consequences are not mitigating factors) (citing *Anthony Fields, CPA*, Securities Act Rel. No. 9727, 2015 SEC LEXIS 662, at *96 (Feb. 20, 2015); *Don Warner Reinhard*, Exchange Act Rel. No. 63720, 2011 SEC LEXIS 158, at *27 (Jan. 14, 2011)).

Critically, Respondent must acknowledge that family and job pressures will persist throughout any career he pursues. Kara has demonstrated both an inability to endure such pressures and a flippant disregard for maintaining client confidences amongst family, thus supporting the conclusion that he is unfit for the securities industry. For example, Kara does not dispute that he was well aware of, and trained extensively on, the need to maintain the confidentiality of client information including not sharing this information with anyone outside of his employer. *See* Mot. at 5-6, n.6 (citing Kara's admissions that he was repeatedly trained on the need to maintain confidentiality and he fully understood that intentional misuse of material nonpublic information was a crime); Jt. Ex. 2 at 16:20-25 (Kara admitting he received "very extensive" training about Citigroup's confidentiality policy), 19:9-12, 20:7-9, 22:16-18 (Kara testifying that he understood Citigroup's policy prevented the sharing of nonpublic information to anyone that did not need to know about it, including anyone "outside of Citigroup"). Bowing to these pressures, Kara improperly and willfully shared Citigroup's confidential information regarding at least 20 companies, over several years, with his brother Michael. *See* Mot. at 7, n.8 (citing Kara's and Michael's admissions regarding Kara's sharing of nonpublic information relating to 20 companies obtained through Kara's role at Citigroup). Kara's willingness to disclose such information became so commonplace that his attitude was cavalier as he admits that he "[felt] extremely comfortable" sharing nonpublic information with Michael. Opp'n at 12 (quotation and citation omitted).[8] It would therefore be unnecessarily dangerous to the public and the markets to permit Kara to act in the fiduciary capacity he now seeks.

But Respondent characterizes his improper disclosures as "negligent and without intent or knowledge that Michael would trade on that information" (Opp'n at 29), and he claims his "misconduct was an aberration in an otherwise exemplary life" (*id.* at 29), and thus he did not act egregiously with a high degree of scienter on multiple occasions. *Id.* at 28. Respondent's argument is divorced from the facts.

By his own admission, Kara intentionally provided his brother Michael with material nonpublic information knowing that Michael would trade on it. Opp'n at 30. He admits this occurred not once, but twice. *See id.* at 30-31 (admitting same); Mot. at 8-10 (detailing Kara's intentional disclosure of nonpublic information so that Michael would profit from insider trading). In addition, there is sufficient evidence supporting the inference that Kara disclosed the material nonpublic information of numerous other companies so that Michael could trade profitably, and Michael himself admitted to attempting to do so. *See* Mot. at n.8, 9-10

[8] Respondent appears to suggest that Michael misappropriated Kara's confidential work information by eavesdropping and peeking at Kara's work papers. Opp'n at 11. However, at trial, Kara testified that he provided material nonpublic information to Michael and that Kara himself could have been the source for all of the nonpublic information Michael knew. Jt. Ex. 3 at 596:5-599:18.

(discussing 20 companies of which Kara disclosed nonpublic information to Michael that he in turn used to place trades beginning in 2004, and providing reason to believe Michael was sharing information with others). For Respondent to characterize such repetitive misconduct as an "aberration" trivializes its egregiousness. *See, e.g.*, *Melvin*, 2015 SEC LEXIS 3624, at *10-11 (holding that an improper disclosure of an impending tender offer is "particularly serious" and resulting securities fraud warranted a permanent bar) (citing *Tender Offers*, Exchange Act Rel. No. 17120, 1980 WL 20869, at *4-5 (Sept. 4, 1980)).

Kara's theory further ignores the fact that he engaged in deceptive practices to avoid detection, and when discovered, he lied repeatedly to the Commission staff during its investigation. Mot. at 10-12, 20. For his part, Respondent glazes over these egregious facts in his Opposition, merely admitting that he lied to the staff during the investigation because he was scared of being punished for his knowingly illegal conduct. Opp'n at 16. But the record is clear: Kara and his brother used code words to cover their tracks (Mot. at 10), created at least one cover story to use in the event they were detected (*id.* at 20), and misappropriated information from clients other than Kara's own (*id.*); and then, Kara flat-out lied to the staff about numerous subjects (*id.* at 11-12), which required both the United States and the Commission staff to expend additional resources investigating this matter. *See* Tr. of Sentencing Hearing dated Dec. 19, 2014, at 19:9-18 (Harris Decl. Ex. 2) (in sentencing Kara, the district court found Kara's "false and misleading" statements caused "a substantial amount of additional investigation" by the government). Kara's personal desire to avoid the consequences of his illegal actions is no justification for his premediated deceptive actions, or his subsequent false statements to investigators.

Under such circumstances, there should be no doubt that the first three *Steadman* factors—the egregiousness of his actions, the recurrent nature of his misconduct, and the degree of scienter involved (*Steadman*, 603 F.2d at 1140)—all weigh heavily in the Division's favor. A permanent, collateral bar is therefore warranted.

2. <u>Respondent's belated recognition of his wrongful conduct and cooperation with the criminal authorities support the issuance of a permanent, collateral bar</u>.

Respondent places great emphasis on his belated recognition of his illegal actions and subsequent cooperation with the United States in its related criminal actions. Opp'n at 16-19, 31-33. But as discussed above, Kara took affirmative steps to avoid detection and lied during the staff's investigation, resulting in additional expenditure of government resources. These fraudulent actions cut against crediting Kara now for providing purportedly sincere assurances against future violations and recognizing his wrongful conduct, the fourth and fifth *Steadman* factors. 603 F.2d at 1140. Moreover, Kara's statements to the authorities and subsequent cooperation did not arise until years after the staff's investigation surfaced in April 2007, and the Criminal and Civil Actions were filed in April 2009.[9]

Respondent also argues that the impact of his misconduct and his subsequent cooperation with the United States have been "devastating," serving as a deterrent against future violations. Opp'n at 32-33. His argument is a non sequitur. Kara's own willful misconduct resulted in the "devastating" impact he now describes, including the serious challenges to his family. His

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[9] Respondent takes issue with the Division's characterization that Kara's cooperation did not materialize until the summer of 2011 (Mot. at 21) because he began providing attorney proffers in "early 2010," followed by his own proffers beginning in April 2010. Opp'n at 31 n.6; Harris Decl. ¶ 6. While the Division disagrees with Respondent's characterization of behavior that recognizes wrongful conduct, the matter need not be decided here because even under Respondent's view, nearly three years passed between Kara becoming aware of the SEC's investigation—and lying to the staff—and his purported cooperation in "early 2010."

misconduct was illegal at the time he undertook it and Kara admits to knowing as much—the fact that has since changed is that Kara was caught red-handed.

In short, Respondent's argument here is focused on Kara having been "punished" enough, and is essentially a plea for leniency based on his cooperation. But that is not the purpose of this proceeding. Rather, the inquiry is what remedial action is necessary in order to protect the public. Given his egregious, deceptive, and repetitive misconduct, the necessary conclusion is that Kara be permanently barred from the securities industry. To grant the carve out Kara seeks to permit him to act as a fiduciary to clients would ill serve the public interest, and would constitute a failure to protect the integrity of the markets. The fourth and fifth *Steadman* factors therefore weigh in the Division's favor.

Notably, in making its sentencing recommendation to the district court and acknowledging the collateral consequences of Kara's criminal conduct, the United States stated that Kara "*is likely to be barred from the securities industry as a result of the parallel SEC case.*" United States' Sentencing Mem. at 8 (Criminal Action, ECF No. 249; Harris Decl. Ex. 1) (emphasis added). At the time, this result was accepted by Respondent as a foregone conclusion. *See* Tr. of Sentencing Hearing dated Dec. 19, 2014, at 12:5 (Harris Decl. Ex. 2) (in arguing against the imposition of a prison sentence, Respondent's counsel stating that Kara's "career as an investment banker is over" and favorably quoting the United States' statement that Kara has "'lost his career in the financial industry'") (quoting Harris Decl. Ex. 1 at 3); Opp'n at 18 (quoting same). The United States noted that while Kara's cooperation with the criminal authorities over a period of years was extraordinary, "that was the deal he struck with the government" and Kara was receiving the benefit of that deal in the United States' sentencing recommendation. Tr. of Sentencing Hearing dated Dec. 19, 2014, at 13:24-14:5 (Harris Decl.

Ex. 2). Indeed, when his true "punishment" was ordered in the Criminal Action, Kara obtained a real, tangible benefit from the likelihood that future incapacitation would result because of the need to protect the public and markets. His resulting sentence was less than the five years of probation recommended by the prosecution. United States' Sentencing Mem. at 9 (Criminal Action, ECF No. 249) (Harris Decl. Ex. 1).

3. Respondent's misconduct and arguments presented here indicate a likelihood of future violations and the need for a deterrent message.

Kara's underlying conduct was egregious and deceptive, and willfully breached the fiduciary duty he owed his employer and its clients. As noted in the Division's Motion, Kara's "actions reveal a highly troubling willingness to ignore a fundamental professional obligation to respect and protect client confidence along with a willingness to instigate and facilitate fraudulent stock trading activity." *See Melvin,* 2015 SEC LEXIS 3624, at *17-18 (citation omitted); *see also Thomas W. Heath, III*, Exchange Act Rel. No. 59223, 2009 WL 56755, at *4 (Jan. 9, 2009), *pet. denied*, 586 F.3d 122 (2d Cir. 2009) (investment banker who discloses confidential client information regarding a pending acquisition "violate[s] one of the most fundamental ethical standards in the securities industry"). Under such circumstances, the sixth *Steadman* factor—"the likelihood that the [respondent's] occupation will present opportunities for future violations" (603 F.2d at 1140)—is readily met and weighs heavily in the Division's favor.

The Commission holds that "the existence of a violation raises an inference that" future violations will occur. *Tzemach David Netzer Korem*, Exchange Act Rel. No. 70044, 2013 WL 3864511, at *6 n.50 (July 26, 2013) (internal quotation omitted); *see also Mitchell T. Toland*, Rel. No. 71875, 2014 WL 1338145, at *3 n.17 (Apr. 4, 2014) (noting that the securities industry is rife with a great many opportunities for abuse and it depends heavily on the integrity of its participants) (citations and quotations omitted). "When combined with the egregious, long-running nature of [Respondent's] misconduct, this factor shows that the Commission's interest in protecting the investing public weighs in favor of a collateral bar." *See Uppal*, 2015 WL 7748187, at *7; *see also* Mot. at 19-23 (collecting cases that note the egregiousness of insider trading, especially when committed by an investment banker and involving tender offers, and the likelihood that remaining in the securities industry will present opportunities for future violations for such offenders).

In response, Respondent repeats his arguments that he has suffered enough because his misconduct has led to the prosecution of his brother-in-law, "devastating" his familial relations, and the loss of employment opportunities in the securities industry. Opp'n at 19-20, 32-33. As discussed above, these arguments are not mitigating factors, much less extraordinarily mitigating, and misunderstand the nature of this proceeding. *See Ralph Calabro*, Securities Act Rel. No. 9798, 2015 WL 3439152, at *40-41 (May 29, 2015); *Uppal*, 2015 WL 7748187, at *7. Allowing Respondent to return to the securities industry when he has demonstrated a knowing disregard for his clients' confidences and the securities laws, a proclivity for deceptive conduct, and failure to respond truthfully to the inquires of the Commission staff flies in the face of Commission precedent. Further, Respondent's arguments that his numerous disclosures of confidential information to his brother were "negligent" and made with "extreme[] comfort[]" belie the sincerity of his assurances against future violations and indicate a likelihood that another job in the securities industry could result in future violations.

In addition, any bar less than a permanent, collateral one sends the wrong deterrent message. Respondent argues that a three-year broker-dealer bar is the appropriate remedial action (if his legal defenses fail). Opp'n at 33-35. Respondent relies on settled administrative proceedings. *Id.* at 33-35 (citing *Trent Martin*, Rel. No. 71369, 2014 WL 251306 (Jan. 23, 2014); *Steven E. Nothern*, Rel. No. 2997, 2010 WL 883939 (Mar. 11, 2010); and *Jonathan Hollander*, Rel. No. 3208, 2011 WL 1924109 (May 19, 2011)). Such compromise positions reached as the result of negotiations are neither controlling nor persuasive here, where the parties previously engaged in extended and confidential settlement negotiations yet could not reach a compromise. And Respondent's argument that he was not motivated by financial gain (Opp'n at 19, 28-29) ignores controlling legal precedent that finds insider trading to be actionable upon receipt of a "personal benefit" that is not necessarily pecuniary. *Dirks v. SEC*, 463 U.S. 646, 663-64 (1983); *United States v. Salman*, __ F.3d __, 2015 WL 4068903, at *6 (9th Cir. July 6, 2015). Finally, the Commission has repeatedly issued permanent, collateral bars in cases similar to this proceeding. Mot. at 19-23 (collecting cases). One is warranted here.

III. CONCLUSION

For the foregoing reasons and those set forth in its Motion, the Division respectfully requests that the Court grant the Division's motion for summary disposition and issue an order permanently barring Kara from associating with any investment adviser, broker, dealer, municipal securities dealer, or transfer agent.

Dated: January 8, 2016

Respectfully submitted,

E. BARRETT ATWOOD
Trial Attorney
Division of Enforcement

CERTIFICATE OF SERVICE

I, John Stearns, hereby certify that an original and three copies of the foregoing

- **DIVISION OF ENFORCEMENT'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION AND OPPOSITION TO RESPONDENT MAHER F. KARA'S CROSS-MOTION FOR SUMMARY DISPOSITION**

was filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549, and that a true and correct copy of the foregoing has been served by United Parcel Service, marked for next day delivery, on January 8, 2016, on the following persons entitled to notice:

Honorable Carol Fox Foelak
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

In addition, an electronic copy has been served by email to

George C. Harris, Esq.
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105
Email: gharris@mofo.com
Attorney for Respondent Maher F. Kara

John Stearns

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SECURITIES AND EXCHANGE COMMISSION
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DIRECT: 415-705-2332
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January 8, 2016

Via UPS Overnight

Office of Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

Re: In the Matter of Maher F. Kara; Administrative Proceeding File No. 3-16803

Dear Sir or Madam:

Enclosed please find the Division's Reply Motion for Summary Disposition.

Both documents are also being sent contemporaneously by UPS overnight to Administrative Law Judge Foelak's office.

Sincerely,

Tony Stearns
Paralegal Specialist
Division of Enforcement

Enclosure